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## Exploitation of minerals from deposits without concession in Polish law

### Wydobycie kopaliny ze złóż bez koncesji w prawie polskim

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#### Abstract

Terms and conditions for undertaking, execution and completion of activities in scope of exploiting minerals from deposits are defined in Act of 9 June 2011 Geological and Mining Law.

Although the right to ownership is guaranteed under Article 64 item 1 of Act of 2 April 1997 the Constitution of the Republic of Poland, section 3 of the cited law points out that the right to ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.

According to Geological and Mining Law in case of exploiting minerals from underground deposits, land ownership is not an absolute principle. Exploitation

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can be executed only after granting a concession in accordance with Article 21 of G.M.L.

Extracting minerals from deposits is a complex problem. It contains both the fact of extraction contrary to the provisions of the Act – extracting minerals from deposits without concession *stricte*, as well as the form of extraction – sand and gravel by an individual for person's own purpose, for which concession is not necessary.

In the Geological and Mining Law Act the matter of responsibility for violating the provisions of the Act in this field is also determined.

**Key words:**

Geological and Mining Law; exploitation; minerals; concession.

## Streszczenie

Zasady i warunki podejmowania, wykonywania oraz zakończenia działalności w zakresie wydobywania kopalin ze złóż reguluje ustawa z dnia 9 czerwca 2011 r. – Prawo geologiczne i górnicze.

Pomimo, że w artykule 64 ustęp 1 ustawy z dnia 2 kwietnia 1997 r. Konstytucja Rzeczypospolitej Polskiej uregulowano prawo do własności w ustępie 3 powołanego przepisu wskazano, że własność może być ograniczona tylko w drodze ustawy i tylko w zakresie, w jakim nie narusza ona istoty prawa własności.

Zgodnie z Prawem geologicznym i górniczym w przypadku wydobywania kopalin znajdujących się pod powierzchnią gruntu, prawo własności gruntu nie ma charakteru absolutnego – wydobycie uzależnione jest od uzyskania koncesji na podstawie artykułu 21 ustawy – Prawo geologiczne i górnicze.

Kwestia wydobywania kopaliny ze złoża stanowi w istocie problemem złożony. Zawiera ona w sobie zarówno sytuacje wydobycia sprzecznego z przepisami ustawy – *stricte* wydobywanie kopalin ze złóż bez koncesji jak również formę wydobycia – piasków i żwirów przez osobę fizyczną na potrzeby własne, dla której koncesja nie jest wymagana.

W ustawie – Prawo geologiczne i górnicze uregulowano również kwestie odpowiedzialności za naruszenie przepisów ustawy w omawianym zakresie.

**Słowa kluczowe:**

Prawo geologiczne i górnicze: wydobycie; kopalina; koncesja.

## Introductory notes

Terms and conditions for undertaking, execution and completion of activities in scope of exploiting minerals from deposits are defined in Act of 9 June 2011 Geological and Mining Law.<sup>1</sup>

Although the right to ownership is guaranteed under Article 64 item 1 of Act of 2 April 1997 the Constitution of the Republic of Poland<sup>2</sup>, section 3 of the cited law points out that the right to ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.

According to Geological and Mining Law in case of exploiting minerals from underground deposits, land ownership is not an absolute principle. Exploitation can be executed only after granting a concession in accordance with Article 21 of G.M.L.<sup>3</sup>

However, it should be pointed out that the legislator has taken into account the problem of preserving the essence of the right to property by making a provision in the Geological and Mining Law (Article 4 item 1) which regulates the extraction of sand and gravel by a physical person.

The present study attempts to demonstrate regulations related to exploiting minerals without a mining concession. Practical problems that stem from applying Geological and Mining Law will also be addressed.

## Rules of licensing activities related to exploiting minerals from deposits

Polish law may impose restrictions on specific types of business activity requiring that a special concession to undertake a certain type of activity is to be granted.

While licensing economic activities is an expression of limiting them, it should be pointed that the constitutional principle of freedom of economic activity is not absolute. In accordance to Article 22 of the Polish Constitution

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<sup>1</sup> Journal of Laws of 2017 item 2126; further referred to as: G.M.L.

<sup>2</sup> Journal of Laws of 1997 item 483, with further amendments; further referred to as: the Polish Constitution.

<sup>3</sup> Judgment of the Supreme Administrative Court of 22 September 2016, II GSK 433/15, available at [orzeczenia.nsa.gov.pl](http://orzeczenia.nsa.gov.pl) – CBOSA.

limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons. The above means were introduced due to the fact that full (unlimited) freedom of economic activity in all its aspects may threaten values which are mentioned in Article 31 of the Polish Constitution,<sup>4</sup> that is the democratic state's security or public order, or the natural environment, health or public morals, or the freedoms and rights of other persons.

To that end, owners should be aware that their rights may be limited on account of public interest<sup>5</sup> what can occur also by requiring a concession to undertake a certain type of activity.

A concession is a form of regulating economic activity by the state which involves limiting freedom of economic entities.<sup>6</sup> It is a form of public authority's consent to undertake and execute an economic activity by a certain entrepreneur.<sup>7</sup> Concession is a public subject (personal) right and on that grounds it is as a rule excluded from civil law turnover (*ius extra commercium*).<sup>8</sup>

Geological and Mining Law (Article 21 item 1 point 2) counts exploiting minerals from deposits among those activities that are limited by above means, i.e. they need a concession to be granted to.

In accordance to Article 6 item 1 point 19 of G.M.L mineral deposit is a natural accumulation of minerals, rocks and other substances excavation of which can bring economical benefits and in accordance to Article 6 item 1 point 3 of this law excavated minerals are the whole of minerals disconnected from the deposits. Thus, it should be acknowledged that the process of disconnecting minerals from their deposits is their excavation.<sup>9</sup>

What is important in the case of minerals which have less firm structure, e.g. sands and gravels which often occur as a granular material, borders

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<sup>4</sup> G. Klimek, in: *Prawo geologiczne i górnictwo. Komentarz*, ed. B. Rakoczy, Warszawa 2015, p. 122.

<sup>5</sup> B. Rakoczy, *Ograniczenie praw i wolności jednostki ze względu na ochronę środowiska w Konstytucji Rzeczypospolitej Polskiej*, Toruń 2006, p. 277.

<sup>6</sup> J. Boć, *Prawo administracyjne*, Wrocław 2000, p. 317.

<sup>7</sup> C. Kosikowski, *Koncesje i zezwolenia na działalność gospodarczą*, Warszawa 2002, p. 47.

<sup>8</sup> Judgment of the Supreme Court of 8 May 1998, III RN 34/98 OSNAP 1999, no. 5, item 157.

<sup>9</sup> Judgment of the Regional Administrative Court in Gliwice of 19 August 2014, III SA/GI 650/14; Judgment of the Regional Administrative Court in Gliwice of 21 March 2017, III SA/GI 540/16, available at [orzeczenia.nsa.gov.pl](http://orzeczenia.nsa.gov.pl) – CBOSA.

of their natural deposits may be hard to define as they are shaped by external factors such as earthmoving works which can lead to displacement of minerals within their deposit, although the integrity of the deposit itself is not undermined. Consequently, it seems that excavations of sands and gravels should involve their complete separation from the deposit by changing their position in such way, so that they are clearly outside the deposit boundaries at the time when the excavation.<sup>10</sup>

Thus it should be assumed that an economic activity is classified as exploiting minerals from deposit on the basis of the real intent of an entity which undertakes this activity.<sup>11</sup>

In this regard it should be pointed out that disposal of acquired materials to other entities does not provide grounds to recognize minerals excavation as their exploiting. This means that exploiting occurs not only in case of disposal of acquired minerals but also when a disconnected material is not sold or intended to be sold. It is only the suitability of the minerals to be sold (and not what they are really intended for) that is relevant to classify substance as mineral<sup>12</sup>.

Under Article 3 item 6 of G.M.L. the act Geological and Mining Law does not apply to the exploitation of aggregates to the extent necessary to complete urgent work to prevent flooding during the term of state of natural disaster. Thus, a concession does not to be granted to undertake excavation work mentioned above.

A granted concession gives right to carry out economic activity, i.e. profit-making activity conducted on an organised and continuous basis.<sup>13</sup> It determines the extent of the rights of the entity and specifies the mining area within boundaries of which the entrepreneur may exercise his right,

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<sup>10</sup> G. Radecki, *Oplata podwyższona za naruszenie warunków wydobywania piasków i żwirów na potrzeby własne*, in: *Prawne aspekty gospodarowania zasobami środowiska. Korzystanie z zasobów środowiska*, eds B. Rakoczy, M. Szalewska, K. Karpus, Toruń 2014, pp. 294-295.

<sup>11</sup> A. Lipiński, R. Mikosz, *Ustawa Prawo geologiczne i górnicze*, Warszawa 2003, p. 14; R. Mikosz, G. Radecki, *Leksykon opłat i kar pieniężnych związanych z korzystaniem ze środowiska*, Wrocław 2010, p. 111; G. Radecki, *op. cit.*, p. 295.

<sup>12</sup> Judgment of the Regional Administrative Court in Gliwice of 19 August 2014, III SA/Gl 650/14; Judgment of the Regional Administrative Court in Gliwice of 21 March 2017, III SA/Gl 540/16, LEX.

<sup>13</sup> G. Klimek, in: *Prawo geologiczne i górnicze...*, p. 125.

which means exploiting the mineral, and determines the period for which it was granted.

Under Article 21 item 4 of G.M.L, concession shall be granted for a period no shorter than 3 years and not longer than 50 years, unless the entrepreneur submitted an application for granting concession for shorter period, in other words shorter than 3 years.

Importantly, in case of any change in the boundaries of mining area a concession must also be changed.

Article 22 of G.M.L. provides for authorities competent for granting a concession for exploiting minerals from deposits.

In accordance to Article 22 item 1 point 2 a concession for exploitation of strategic<sup>14</sup> minerals from the deposits shall be granted by the minister responsible for the environment. Article 10 item 1 G.M.L. provides for strategic minerals exploited from deposits, i.e. hydrocarbons, hard coal, methane occurring as accompanying mineral, lignite, metal ores with the exception of soddy iron ores, native metals, ores of radioactive elements, native sulfur, rock salt, potassium salt, potassium-magnesium salt, gypsum and anhydrite, gemstones.

Under Article 22 item 2 of G.M.L. a concession for exploitation of minerals from deposits shall be granted by the Starost only when requirements specified in the Act are met at the same time. In this case the area of documented deposit not covered by the usufruct rights must not exceed 2 ha, the mineral exploitation from the deposit must not exceed 20,000 m<sup>3</sup> during a calendar year and activities will be conducted with open pit method and without the use of explosives.

In other cases a concession for exploitation of minerals from deposits shall be granted by the Marshal of the Voivodship.

## Extracting of sand and gravel for the physical person's own needs

Article 4 of the G.M.L. does a partial exclusion of applying some provisions of Geological and Mining Law to physical persons extracting sand and gravel for their own needs. This exclusion can be applied after fulfilling the conditions determined by the provisions of the Act.

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<sup>14</sup> *Ibidem*, p. 127.

Firstly, it shall be underlined that hereinabove mentioned exclusion concerns only extracting sand and gravel. Thus, it does not concern other minerals, which were not mentioned in this regulation, e.g. peat or sandstone, although all the other conditions determined in Article 4 of the G.M.L. should be fulfilled by an individual who performs extracting activities.

Extraction of sand and gravel must be performed by a physical person. Polish legislator does not limit the capabilities of applying the exclusion from Article 4 of the G.M.L. according to a physical persons conducting business activity or not conducting business activity. Therefore, to apply the exclusion from Article 4 of the G.M.L. it does not matter if a land owner or a perpetual user performs business activity or not; it is important not to be a legal person.<sup>15</sup>

In addition, it should be mentioned that pursuant to Article 33 of the Act of 23 April 1964 the Civil Code,<sup>16</sup> the legal persons are the State Treasury and organisational units which with specific provisions receive legal entity.

Hereinabove mentioned regulation may be also applied to co-owners and perpetual co-users and therefore the exclusion from Article 4 of the G.M.L. can be applied only to co-owners and perpetual co-users who are physical persons.<sup>17</sup>

Moreover, the extraction of sand and gravel by a physical person must take place on the property which is the subject of property rights or perpetual use.

Hence, the exclusion from Article 4 shall not be applied if the physical person extracts sand and gravel from the property which is the other subject's property or under perpetual use.

Other conditions for applying the exclusion determined in Article 4 of the G.M.L. are connected with the aim of extraction which shall be performed to fulfil the physical person's own needs.

It shall be indicated that such conditions are not easy to be evaluated. In the Geological and Mining Law Act there is absence of legal definition of the term "own needs". Thus, the exclusion from Article 4 of the G.M.L. can be applicable in any situation in which a physical person, who is an owner or a perpetual user of a property, extracts sand and gravel for own needs. It means that "extracting minerals must be connected with fulfilling

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<sup>15</sup> B. Rakoczy, in: *Prawo geologiczne i górnictwo...*, p. 45-46.

<sup>16</sup> Journal of Laws of 2017 item 459, with further amendments.

<sup>17</sup> B. Rakoczy, in: *Prawo geologiczne i górnictwo...*, p. 46.

own needs of an owner or a user”.<sup>18</sup> Therefore, for the exclusion from Article 4 of the G.M.L. to be applicable, extracted deposits cannot be disposed both for remuneration or free of charge, as well as it cannot be the subject of a loan agreement.<sup>19</sup>

Meeting the abovementioned conditions connected with an individual performing extraction as well as a method of managing with the extracted sand and gravel is still not enough to withdraw the application of the provisions of chapter III-VIII and Articles 168-174 of the G.M.L.

On the basis of the regulation determined in Article 4 of the G.M.L. the legislator demands the following conditions connected with the manner and limits of extraction as well as the purpose of the property: the mining will be performed without the use of blasting agents; it will not be greater than 10 m<sup>3</sup> per calendar year; does not violate the destination property.

The legal definition of blasting agents is determined in Article 6 item 1 point 14 of the G.M.L., according to which blasting agents are explosives in the terms of the Act of 21 June 2002 on explosives earmarked for civil usage.<sup>20</sup> This Act in Article 3 point 11 determines explosive materials as chemical liquids or solid substances or a mixture of substances which are able to chemical reaction producing gas of such temperature and pressure and with such speed that can cause destruction in surrounding environment as well as products filled with explosive materials, from the first class, which are referred to in attachment A.

According to the quantity of extraction within one calendar year, it should be indicated that the legislator determined the rigid limit of 10 m<sup>3</sup> not providing any exemptions in the given scope. What is more, this quantity is not multiplied in the event of extraction from the property being the subject of co-ownership. It means that in a given calendar year all the co-owners and co-users of the property cannot extract more than 10 m<sup>3</sup> of sand and gravel together.<sup>21</sup>

Moreover, the limit of extraction concerns all the properties, to which a certain physical person have property rights or perpetual use<sup>22</sup>.

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<sup>18</sup> *Ibidem.*

<sup>19</sup> *Ibidem.*

<sup>20</sup> Journal of Laws of 2017 item 283, with further amendments.

<sup>21</sup> B. Rakoczy, in: *Prawo geologiczne i górnicze...*, p. 48.

<sup>22</sup> G. Radecki, *op. cit.*, p. 302.



The legislator does not mention the possibility of enlarging the limit of annual extraction within a certain calendar year if the granted limit was not used in the previous time period. It means that after a certain calendar year the statutory limit expires. What is more, a calendar year shall not be treated as an annual period which is counted from the moment of the beginning of extraction or alternatively from the notifying the Starost with a notice in writing, specifying the intention of extracting minerals and the intended time of the beginning of this activity.<sup>23</sup>

The last of the abovementioned conditions is to be evaluated, which causes significant difficulties while investigating its occurrence. It is also determined<sup>24</sup> that the destination of property may have objective or subjective character. The first of them concerns with the statutory term of the destiny of the property and the second one means an owner's or a perpetual user's will of using the property in a certain way.

Pursuant to Article 7 of the G.M.L. undertaking and execution of activities defined by this Act is allowed only if it does not violate any specific destination of the properties foreseen in the local urban spatial development plan and in separate regulations. In case of the absence of the local urban spatial development plan, undertaking and execution of activities defined by this law is permissible only in case if it does not violate the way of using the property foreseen in the study of conditions and directions of spatial management, and in separate regulations.

However, in Article 4 of the G.M.L. there is only a general statement concerning a destination of the property, which means that evaluation of the purpose of the ground may be conducted on the basis of the records of grounds and buildings.<sup>25</sup>

Before the beginning of extracting sand and gravel for own needs, the physical person must fulfil formal requirements determined in Article 4 item 2 of the G.M.L. According to this regulation it is required to notify the proper mining supervision authority with a 7 days' notice in writing, specifying the localisation of intended works and the intended duration of their execution. Specifying the localisation means giving a geodetic number of the property and specifying the place where the works will take

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<sup>23</sup> B. Rakoczy, in: *Prawo geologiczne i górnictwo...*, p. 48 ; G. Radecki, *op. cit.*, p. 302.

<sup>24</sup> B. Rakoczy, in: *Prawo geologiczne i górnictwo...*, p. 48.

<sup>25</sup> *Ibidem*, pp. 60- 61.

place on this property.<sup>26</sup> In case of specifying the time, it is important to determine its limits to enable verifying if the mining will not be greater than 10 m<sup>3</sup> per a certain calendar year.

If one of the abovementioned conditions, e.g. time or a mining place, would be changed it is required to notify about this fact the proper mining supervision authority within 7 days.

It shall be noted that the concession may be granted on the request of the subject, who will fulfil strict requirements determined in the proceedings of the Geological and Mining Law Act. Particularly, it may be granted if the applying entrepreneur determined in details its range, examined minerals, fulfilled a number of formal conditions, filed a range of attachments approving the way of conducting and professionalism of the planned activity, e.g. geological documentation of the deposits. These conditions indicate that mining is a complex activity, which demands specialised knowledge and performing it in an inappropriate way poses a serious threat. However, in case of extracting sand and gravel by a physical person for their own needs in the amount of up to 10 m<sup>3</sup> annually it is required to notify previously mining supervision authority.<sup>27</sup>

The concerned notice does not start any administrative proceedings, thus it is a substantive condition of extracting sand and gravel for own needs. Therefore, the notice cannot be concerned as an activity of a procedural character.<sup>28</sup>

What is important, to start extracting for own needs, it is enough to possess a confirmation of this activity by a person applying with a notice. Mining supervision authorities are not entitled to grant to the notifying person an approval for mining covered with a notice in any form in the form of a certificate or an administrative decision.

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<sup>26</sup> *Ibidem*, p. 50.

<sup>27</sup> Judgment of the Regional Administrative Court in Gliwice of 7 December 2016, III SA/GI 988/16, available at [orzeczenia.nsa.gov.pl](http://orzeczenia.nsa.gov.pl) – CBOSA.

<sup>28</sup> G. Radecki, *op. cit.*, p. 306.

## **The increased charge connected with extracting minerals from deposits without the concession**

In connection with extracting minerals from deposits without the concession we shall underline the rigid legal regime, which if not obeyed, results in an appropriate sanction according to Article 140 of the G.M.L. – the necessity of paying the increased charge.

The increased charge is the administrative financial sanction used as the administrative responsibility in environmental protection.<sup>29</sup>

It is borne for illegal usage of environment, resulting from the infringement of one kind of the obligation, e.g. lack of the previous agreement of the authority. It may also be connected with a disagreement to the next period of performing the activity.<sup>30</sup> In relation to the activity connected with exploration of mineral deposits performed without the appropriate concession, obtaining the concession shall be understood as the agreement.

Therefore it should be considered that the increased charge sanctions exceeded obligation of obtaining concession before the beginning of extracting minerals from deposits which is determined in the Act.

The reason of the increased charge for extracting minerals from deposits without the concession shall be examined on the basis of timeframe for which the concession is granted (for the specified period, not shorter than 3 years and not longer than 50 years, unless the entrepreneur submitted an application for granting concession for shorter period).<sup>31</sup>

It is to be noted, that extracting minerals without the required concession may also take place if there is the concession withdrawal. These powers are regulated in Article 37 item 2 of the G.M.L., according to which the concession authority may withdraw the concession without compensation in the event that the entrepreneur did not follow the decision, in which the concession authority summoned it to cease the infringements relating to violation of the requirements of the Geological and Mining Law Act, in particular concerning the environment protection and the rational

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<sup>29</sup> K. Karpus, in: *Prawo geologiczne i górnicze...*, pp. 727 and 733; M. Szalewska, *Administracyjne środki finansowo-prawne w prawie geologicznym i górniczym*, in: *Wybrane problemy prawa geologicznego i górniczego*, ed. B. Rakoczy, Warszawa 2016, p. 96.

<sup>30</sup> K. Karpus, in: *Prawo geologiczne i górnicze...*, p. 727.

<sup>31</sup> K. Karpus, in: *Prawo geologiczne i górnicze...*, p. 733.

development of the deposit, or the failure to comply with conditions specified in the concession, including not undertaking the foreseen activity or permanent cessation thereof.

In Article 140 item 3 point 3 of the G.M.L., the legislator determined the basis of calculating the increased charge for extracting minerals. The amount of the charge depends on the quantity of minerals extracted effectively without the required concession and determined exploitation charge. The increased charge shall be fixed at the level of forty times an exploitation charge rate for a given type of mineral, multiplied by the number of minerals extracted without the concession. The charge is determined using the valid rates on the day of starting the proceedings and shall be payable within 14 days from the date on which the decision becomes final. It shall also be noted that the payment of an exploitation charge for extracting minerals without concession does not sanction the circumstances of proceedings with the extraction of minerals before it was granted.<sup>32</sup>

The increased charge cannot be imposed anytime. Pursuant to Article 143 of the G.M.L., the relevant decision may not be issued after 5 years from the end of the year in which the event justifying its issuing took place.

The article mentioned hereinabove determines all the parties to proceedings concerning extracting minerals from deposits without concession. The party to proceedings is an entrepreneur, who carries out activities without the required concession, in the absence of an entrepreneur, the party to proceedings is an owner of land or any individual who possess the legal title to the property where extracting minerals without concession is being performed.

It should be underlined that the increased charge may be granted only to an individual who was extracting minerals, not to e.g. co-owners of the property, who did not took part or even did not know about such activity.<sup>33</sup>

Therefore, at first, the authority has to determine if there was an extraction of minerals, who is a party to the proceedings – who was extracting minerals

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<sup>32</sup> Judgment of the Regional Administrative Court in Szczecin of 26 February 2009, II SA/Sz 438/08, available at [orzeczenia.nsa.gov.pl](http://orzeczenia.nsa.gov.pl) – CBOSA.

<sup>33</sup> Judgment of the Regional Administrative Court in Gliwice of 21 January 2013, III SA/Gl 1443/12, Judgment of the Regional Administrative Court in Warsaw of 17 December 2013, IV SA/Wa 2286/13, available at [orzeczenia.nsa.gov.pl](http://orzeczenia.nsa.gov.pl) – CBOSA.

and the quantity of minerals extracted before the increased charge for extracting minerals without a required concession will be granted.<sup>34</sup>

If there is no possibility to determine who was extracting minerals, the increased charge is granted to an owner of the property or another person having the title to the property, where extracting minerals without concession was performed.

In Article 140 of the G.M.L. the relevant authorities responsible for granting the increased charge for extracting minerals from deposits without the concession were also indicated. For the activities performed within the boundaries of maritime areas of the Republic of Poland, the relevant authority is the minister responsible for environment, in other cases – the competent mining supervision authority.

### **The increased charge connected with extracting of sand and gravel for the physical person's own needs**

A different function than the increased charge for extracting minerals without concession is served by the increased charge referred to in Article 4 item 3 point 2 of the G.M.L., which is connected with extracting sand and gravel for the physical person's own needs.<sup>35</sup>

Infringement of requirements referring to a type of extracted mineral, a subject performing extraction, land property, needs for which extraction is performed, the right to dispose as well as the method, the limit of extraction, changes of the purpose of the property and a notification about planned extraction causes that the mining supervisory authority through an administrative decision grants to the person performing such an activity the increased charge determined in Article 140 of the G.M.L.<sup>36</sup>

While conducting proceedings concerning extracting minerals for "own needs", the first instance authority has to determine the purpose of extraction, as well as legal title to the extracting minerals. Practically, it concerns exploration of mineral deposits covered by legal rights (property right, perpetuity) and not by business activity within the meaning of Article

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<sup>34</sup> Judgment of the Regional Administrative Court in Łódź of 20 May 2015, III SA/Łd 272/15, available at [orzeczenia.nsa.gov.pl](http://orzeczenia.nsa.gov.pl) – CBOSA.

<sup>35</sup> G. Radecki, *op. cit.*, p. 292.

<sup>36</sup> *Ibidem*, p. 292.

2 of the Act of 2 July 2004 on freedom of economic activity<sup>37</sup> – without any rights to dispose of minerals.<sup>38</sup>

Similar to a case of the increased charge connected with extracting minerals from deposits without the concession, the increased charge connected with extracting sand and gravel for the physical person's own needs may be granted only to a person who was extracting minerals – only this subject shall be a party to the proceedings referred to this charge.<sup>39</sup>

It shall be noted that the regulations referring to the increased charge granted to a subject extracting minerals from deposits without concession may be applicable to the increased charge granted pursuant to Article 4 item 3 of the G.M.L.

### The cessation of activity of a mining plant

The Act of 11 July 2014 with an amendment of the Geological and Mining Law Act and some other acts<sup>40</sup> repealed Article 173 item 1 of the G.M.L., which determined the mining supervisory authority to cease activity of a mining plant in the event its activity was performed without the required concession.

In the event of finding activity without the required concession the appropriate authority, by a decision, ordered the cessation of activity.

Therefore, the provisions of the Act determined the cessation of concession proceedings in the case it was determined it was conducted without fulfilling the requirements determined in Article 21 item 1 point 2 – the requirement of obtaining the concession in connection with extracting minerals from deposits.

The present legal system does not have any regulations concerning competence of geological and mining administrative authority to an established activity in the event of finding activity without the required concession.<sup>41</sup>

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<sup>37</sup> Journal of Laws of 2017 item 2168, with further amendments.

<sup>38</sup> Judgment of the Regional Administrative Court in Gliwice of 3 April 2017, III SA/GI 1540/16; Judgment of the Regional Administrative Court in Gliwice of 7 December 2016, III SA/GI 988/16, available at [orzeczenia.nsa.gov.pl](http://orzeczenia.nsa.gov.pl) – CBOSA.

<sup>39</sup> G. Radecki, *op. cit.*, p. 303.

<sup>40</sup> Journal of Laws item 1133, with further amendments.

<sup>41</sup> M. Walas, in: *Prawo geologiczne i górnicze...*, p. 173.

## Penal provisions

In the Geological and Mining Law Act there are also penal provisions connected with criminal liability for extracting minerals without concession.

The violation of economic activity without the required concession was regulated in Article 176 of the G.M.L. According to its content an individual who without the required concession performs activities of extracting minerals from deposits causes substantial damage to property or serious damage to the environment is punished by imprisonment up to 3 years. Therefore, the condition for punishing the perpetrator pursuant to this article is substantial damage to property or serious damage to the environment.

Moreover, if an individual performing activity of extracting minerals from deposits causes immediate danger of material injury to property or serious damage to the environment, is subject to fine, restriction of liberty, or imprisonment up to 2 years. Therefore, the condition for punishing the perpetrator pursuant to this article is substantial damage to property or serious damage to the environment.

Hereinabove mentioned crimes can be committed both intentionally and unintentionally. The matter of criminal responsibility due to unintentional committing hereinabove described crimes was regulated in Article 176 item 3 of the G.M.L. The crime responsibility due to crimes committed unintentionally is less severe and it is restricted to fine, restriction of liberty, or imprisonment up to 1 year.

The violation of performing activity without the required concession was determined in Article 177 of the G.M.L. Pursuant to this article, the individual, who performs activity of extracting minerals from deposits without the required concession, is punishable by jail or fine.

Performing activity of extracting minerals from deposits according to regulations of the Geological and Mining Law Act, which is on the basis of the granted concession, is an interest protected by law.<sup>42</sup>

Contrary to the crimes determined in Article 176 of the G.M.L., to determine violation of not having the required concession, the result is not necessary. On the basis of Article 177 of the G.M.L. only performing

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<sup>42</sup> J. Maciejewska, in: *Prawo geologiczne i górnictwo...*, p. 889.

activity of extracting minerals from deposits is punishable. Moreover, this violation can be committed both intentionally and unintentionally.<sup>43</sup>

Pursuant to Article 35 of the Act of 20 May 1971 of the Code of Administrative Offences,<sup>44</sup> which general provisions can be applied to the hereinabove mentioned violation, imprisonment can be adjudicate only if the deed was committed intentionally.

It shall be noted, that pursuant to Article 41 of the Code of Administrative Offences, in relation to a perpetrator it may be enough to instruct, warn or use other educational methods.

Finally, it shall be noted, that legal responsibility determined in Article 176 and 177 of the G.M.L. does not exclude administrative responsibility for extracting minerals from deposits without the concession.

### Concluding remarks

From the above analysis it can be concluded that extracting minerals from deposits is a complex problem. It contains both the fact of extraction contrary to the provisions of the Act – extracting minerals from deposits without concession *stricte*, as well as the form of extraction – sand and gravel by an individual for person's own purpose, for which concession is not necessary.

In the Geological and Mining Law Act the matter of responsibility for violating the provisions of the Act in this field is also determined.

What is more important, imposing the increased charge does not exclude legal responsibility on the contrary, which is even more severe for the subject violating the provisions of the Act.

It should also be noted that an individual violating the provisions in this field may be the subject to civil liability regulated in the Act of 23 April 1964 of the Civil Code.<sup>45</sup>

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<sup>43</sup> *Ibidem*, p. 890-891.

<sup>44</sup> Journal of Laws of 2015 item 1094, with further amendments.

<sup>45</sup> Journal of Laws of 2017 item 459, with further amendments.



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